

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-20753

United States Courts
Southern District of Texas
FILED

January 03, 2020

AUDREY K. MILLER,

David J. Bradley, Clerk of Court

Plaintiff - Appellant

v.

UNIVERSITY OF HOUSTON SYSTEM; UNIVERSITY OF HOUSTON
DOWNTOWN,

Defendants - Appellees


H-15-CV-2927

Appeal from the United States District Court
for the Southern District of Texas

ORDER:

IT IS ORDERED that appellant's opposed motion to supplement the record on appeal with documents filed in district court case No. 4:15-CV-2824, document Nos. 36 with attachments #1-3, 51, 67, 71, 71-1, and 71-2 is DENIED.

IT IS FURTHER ORDERED that appellant's unopposed motion to supplement the record on appeal with documents filed in district court case No. 4:15-CV-2927, document No. 60, containing one disc with an exhibit, and documents filed in district court case No. 4:15-CV-2824, document Nos. 50 and 66, is GRANTED.



JAMES C. HO
UNITED STATES CIRCUIT JUDGE

Case No. 19-20753
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Audrey K. Miller,

Plaintiff-Appellant

v.

University of Houston System; University of Houston Downtown,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION
4:15-cv-2927

APPELLANT'S OPPOSED MOTION TO SUPPLEMENT THE RECORD

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Case No. 19-20753
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Audrey K. Miller,

Plaintiff-Appellant

v.

University of Houston System; University of Houston Downtown,

Defendants-Appellees

CERTIFICATE OF INTERESTED PERSONS

Pursuant to FED. R. APP. P. 26.1 and 5TH CIR. R. 28.2.1, Plaintiff-Appellant Audrey K. Miller offers this Certificate of Interested Persons.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

1. Audrey K. Miller, Plaintiff-Appellant;
2. Terrence B. Robinson and Monica Nunez-Garza, TB Robinson Law Group, PLLC, Attorneys for Plaintiff-Appellant;
3. University of Houston System and University of Houston Downtown, Defendants-Appellees; and

4. Benjamin Dower, Office of the Texas Attorney General, Attorney for Defendants-Appellees.

/s/ Terrence Bouvier Robinson

Attorney for Plaintiff-Appellant,
Audrey K. Miller

By this motion, Plaintiff-Appellant Audrey Miller (“Plaintiff-Appellant” or “Miller”), seeks to supplement the appellate record with a disc filed as an exhibit in this case and documents filed in Southern District of Texas Court Case No. 4:15-cv-2824: Audrey Miller v. Sam Houston State University and Texas State University System, which was handled jointly by the District Court with this case, Southern District of Texas Court Case No. 4:15-cv-2927, and would show the court as follows:

I. Factual and Procedural Summary

In this case, 19-20753, District Court Case No. 4:15-cv-2927, Miller v. University of Houston System, et al, Plaintiff-Appellant filed a disc containing an exhibit to her Response to Defendant’s Motion for Summary Judgment. *See Case No. 4:15-cv-2927, Instrument/Doc. No. 60.*

On October 30, 2015, the District Court issued an order on administration that Docket Nos. 4:15-cv-2824, Miller v. Sam Houston State University, et al, and 4:15-cv-2927, Miller v. University of Houston System, et al, would be handled jointly. *See Case No. 4:15-cv-2824, Doc. No. 7, and Case No. 4:15-cv-2927, Doc. No. 7.*

The District Court held conferences/hearings regarding both cases on January 25, 2016, March 29, 2016, May 4, 2016, June 1, 2016, and March 29, 2017. *See Case No. 4:15-cv-2824, Doc. Nos. 29, 44, 52, 63, and 110 and Case No. 4:15-cv-2927, Doc. Nos. 23, 37, 41, 51, and 75.* Additionally, the District Court ordered that

a full copy of Miller's deposition be filed in each case. See Case No. 4:15-cv-2824, Doc. No. 58 and Case No. 4:15-cv-2927, Doc. No. 47.

Transcripts of the conferences/hearings were requested and filed in this case (4:15-cv-2927) for the conferences/hearings held on January 25, 2016 (See Doc. Nos. 25 and 26), May 4, 2016 (See Doc. Nos. 45 and 46), and March 29, 2017 (See Doc Nos. 79 and 80). However, the transcripts for the conferences/hearings held on *March 29, 2016* and *June 1, 2016*, were solely filed in case 4:15-cv-2824, Miller v. Sam Houston State University et al. *See Case No. 4:15-cv-2824, Doc. Nos. 50, 51, 66, and 67.*

The transcript of Miller's deposition, which occurred on May 26, 2016, and included questions and answers relevant to both cases, was filed in this case (see Doc. Nos. 53 and 53-1). However, the *transcript of Miller's deposition*, which occurred on *May 25, 2016*, and also included questions and answers relevant to both cases was solely filed in Case No. 4:15-cv-2824. *See Case No. 4:15-cv-2824, Doc. Nos. 71, 71-1, and 71-2.*

Additionally, on February 24, 2016, Miller's *Motion for Reconsideration* was mistakenly only filed in *Case No. 4:15-cv-2824 (Doc No. 36 with Attachments #1-3)*, but included arguments for this case as well. This is further evidenced by the District Court filing an Order Denying Reconsideration in this case, on February 25,

2016, which is after Miller filed the Motion for Reconsideration in the Case No. 4:15-cv-2824. See Case No. 4:15-cv-2927, Doc. No. 32.

II. Argument

Under Federal Rule of Appellate Procedure 10(e), if any material to either party is omitted from the record by error or accident, the omission may be corrected and a supplemental record may be certified and forwarded: (a) on stipulation of the parties, (b) by the district court before or after the record has been forwarded, or (c) by the court of appeals. FED. R. APP. P. 10(e). Rule 10(e) exists to allow the court to conform the record to what occurred in the district court. *United States v. Page*, 661 F.2d 1080, 1081 (5th Cir. 1981).

As Plaintiff-Appellant filed the disc containing an exhibit to her Response to Defendant's Motion for Summary Judgment in this case (Case No. 4:15-cv-2927, Instrument/Doc. No. 60), this certainly reflects documents that were filed before the district court.

As the conferences/hearings on March 29, 2016 and June 1, 2016, were held jointly regarding both this case (4:15-cv-2927) and Case No. 4:15-cv-2824, the hearings, and accordingly the transcripts filed in Case No. 4:15-cv-2824 (Doc. Nos. 50, 51, 66, and 67) reflect what occurred at the district court. *See Page*, 661 F.2d at 1081. Additionally, the transcript of Miller's deposition which occurred on March

25, 2016 reflect what occurred before the district court and in both cases. See Case No. 4:15-cv-2824, Doc. Nos. 71-71-1, and 71-2. The Motion for Reconsideration which was accidentally solely filed as Document No. 36 with Attachments #1-3 in Case No. 4:15-cv-2824 also contains relevant information to this case and was denied by the district court in this case. Thus, the hearing transcripts filed as Document Nos. 50, 51, 66, and 67, the deposition transcript filed as Document Nos. 71, 71-1, and 71-2, and the Motion for Reconsideration filed as Document No. 36 with Attachments #1-3, in Case No. 4:15-cv-2927, contain relevant information to the case at hand and were omitted from the record by error or accident. *See* FED. R. APP. P. 10(e). Therefore, pursuant to Federal Rule of Appellate Procedure 10(e), the record in this case should be corrected and supplemented with the disc filed as Instrument/Document No. 60 in Case No. 4:15-cv-2927, and the following documents filed in Case No. 4:15-cv-2824: the March 29, 2016 conference transcript filed as Document Nos. 50 and 51, the June 1, 2016 hearing transcript filed as Document Nos. 66 and 67, the deposition transcript filed as Document Nos. 71, 71-1, and 71-2, and the Motion for Reconsideration filed as Document No. 36 with Attachments #1-3.

III. Prayer for Relief

Appellant respectfully requests that the Court grant its Motion to Supplement the Record with documents filed in *Case No. 4:15-cv-2927, Instrument/Document*

No. 60 (one disc containing an exhibit), and documents filed in Case No. 4:15-cv-2824, Documents Nos. 36 with Attachments #1-3, 50, 51, 66, 67, 71, 71-1, and 71-2.

Respectfully submitted,

/s/ Terrence Bouvier Robinson

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ATTORNEYS FOR PLAINTIFF-APPELLANT

CERTIFICATE OF CONFERENCE

On November 14, 2019, Attorney for Appellant and Attorney for Appellee conferred regarding this matter and on December 19, 2019, after reviewing the foregoing Motion to Supplement the Record, Attorney for Appellees has stated that they will be filing a response, as well as the following:

Audrey K. Miller v. University of Houston System; University of Houston Downtown Case No. 19-20753 USDC No. 4:15-CV-2927	
Appellant's Prayer for Relief	Appellees' Opposition Status
"Appellant respectfully requests that the Court grant its Motion to Supplement the Record with documents filed in Case No. 4:15-cv-2927, Instrument/Document No. 60 (one disc containing an exhibit)...."	Unopposed.
"... and documents filed in Case No. 4:15-cv-2824, Document[] No. ... 50."	Unopposed.
"... and documents filed in Case No. 4:15-cv-2824, Document[] No. ... 66."	Unopposed.
"... and documents filed in Case No. 4:15-cv-2824, Documents Nos. 36 with Attachments #1-3, ... 51, ... 67, 71, 71-1, and 71-2."	Opposed.

/s/ Terrence Bouvier Robinson
Terrence Bouvier Robinson

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of December, 2019, an electronic copy of the foregoing Motion to Supplement the Record was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit, using the appellate CM/ECF system and served on all attorney(s) of record via CM/ECF service.

/s/ Terrence Bouvier Robinson
Terrence Bouvier Robinson

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because the motion contains 944 words, as determined by the word-count function of Microsoft Word for Office 365, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Fifth Circuit Rule 32.2.

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in Times New Roman 14 Point Font.

/s/ Terrence Bouvier Robinson

Terrence Bouvier Robinson

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 03, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-20753 Audrey Miller v. University of Houston System,
 et al
 USDC No. 4:15-CV-2927

Enclosed is an order entered in this case.

The court has granted the motion to supplement the record in this case. The originating court is requested to provide us with a supplemental electronic record consisting of the documents outlined in the attached motion. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record. The supplemental electronic record is due within 15 days from the date of this order.

Sincerely,

LYLE W. CAYCE, Clerk

Jann Wynne

By: Jann M. Wynne, Deputy Clerk
504-310-7688

Mr. David J. Bradley, Clerk
Mr. Matthew Allen Deal
Mr. Benjamin Lindberg Dower
Ms. Monica Nunez-Garza
Mr. Terrence Bouvier Robinson